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Victor L. Cohen, Esq.
Premerger Notification Office
Room 33
Bureau of Competition
Federal Trade Commission
7 Pennsylvania Avenue, NW
Washington, D.C. 20580

enns material may be subject to the confidentiality provisions of Section 7A(h) of the Clayton Act which restricts release under the Freedom of Information

Dear Mr. Cohen:

This firm represents to a proposed acquisition of certain related assets. This letter confirms our conversation on October 6, 1995, in which we discussed whether premerger notification is required for the proposed acquisition. It is our understanding that our communications are confidential. We also understand that your opinions were based on the facts presented you and you will not provide us with a written response to this letter; however, you will contact us by telephone to confirm its accuracy.

In the proposed acquisition will sign an agreement to purchase approximately \$46 million of assets. All of the assets will ultimately be purchased by one or, potentially, two assignees of the second of the second of the second of the assets of the second of the assets or \$36 million of assets.

The second potential purchaser is the which may purchase those assets located in the product of the product of the product of the possibility, so we did not discuss it on October 6. We do not believe that this change is such as to require premerger notification.





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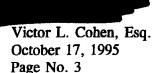
In our conversation, we stated to you that:

- The parties to the proposed transaction are engaged in activities affecting commerce.
- ♦ The proposed transaction will involve a purchase of assets.
- ♦ The purchase price will be \$46 million.
- There will be four parties to the proposed transaction.

  Inc. (a corporation):

  individual); an individual).

  (an individual).
- California, Inc. is a wholly-owned subsidiary of which has annual net sales or total assets of \$100 million or more.
- Under the asset purchase agreement, agree to purchase certain assets from the however, they will have the right to assign the purchase rights to a new corporation to be formed, which will consummate the transaction.
- Prior to its purchase of talks and sales or assets.
- None of the stockholders in the new corporation will own or vote more than 50% of its stock.
- ♦ None of the stockholders in the new corporation will be spouses or minor children of each other.
- each own 50% of another company



is the general partner of a limited partnership. Under the management and operation of the ousmess and affairs of the partnership," but is allocated only 2% of the partnership's profits, losses or other distributions.

does not have any subsidiaries.

each own 30% of the common stock of ach also vote an additional 15% of the stock, pursuant to trusts established for each others' minor children.

Except as noted above, none of the remaining stock is owned by spouses or minors.

nost recent balance sheet was prepared on December 27, 1994. The balance sheet was not audited, but was prepared in accord with the procedures normally used the control of the recent balance sheet reflects annual gross sales of \$8,679,885 and total assets of \$3,687,327. A new annual financial statement will not be prepared before closing.

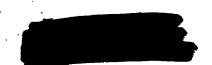
- On December 27, 1994, another company was merged into
- The most recent annual financial statement for the stated December 27, 1994. As of that data that gross sales of \$5,169,525 and total assets of \$2,340,436.

Based upon these facts, you advised us that:

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Premerger notification is not required when the execute the asset purchase agreement. The Hart-Scott-Rodino Annurust improvements Act of 1976 does not require premerger notification unless a person will hold assets or voting securities as a result of the transaction, and the right to purchase the assets to the new corporation.

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None of the stockholders in the new corporation are required to provide notice of its formation, unless either:

one of the stockholders (including all persons or entities encompassed by that stockholder) has annual net sales or total assets of \$100 million or more; another has annual net sales or total assets of \$10 million or more; and the new corporation will have total assets of \$10 million or more; or

two of the stockholders in the new corporation each have annual net sales or total assets of \$10 million or more; and the new corporation will have total assets of \$100 million or more.

In determining the respective "sizes" of the limited partnership which is general partner of are *not* included. This is so even though each own 50% of the stock of and, thus, each "controls" under FTC Rule 801.1(b)(1)(ii), a general partner does not "control" a partnership unless it has the right to 50% of the partnership's profits or assets (in the event of dissolution). In our case, the partnership and, thus, does not "control" it.

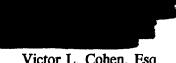
When determining the part of the part of the new corporation must report its formation under FTC Rule 801.40(b), the value of the assets to be purchased from the part of the

In determining the size of the new corporation under FTC Rule 801.40(6), the value of any assets transferred to it, any cash and any loan guarantees are included.

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In the other stockholders in the new corporation (including any persons of emities controlled by them) each do not have annual net sales or total assets in excess of \$10 million, notification of the formation of that corporation is not required.

In determining the size of the new corporation at the time it purchases the assets, any cash or loan guarantees contributed at formation "pass through." What this means is that, under FTC Rule 801.11(e)(ii), the value of any cash or loan guarantees is *not* included in determining whether the new corporation has annual net sales or total assets of \$10 million or more and, thus, satisfies the "size of person" test.

Neither the limited partnership described above under FTC Rule 801.1.

When determining the size of the new corporation at the time of the asset purchase, the net sales or total assets of and the limited partnership described above are *not* included.

We should *not* rely or December 27, 1994 annual statement to determine its size. Rather, we must look to more recent financial statements or reports prepared for the internal use of the first statement of the internal use of

As noted above, there is a possibility the same vill purchase \$10 million of assets. Those assets are related to certain properties in already does business. This purchase would be part of the same transaction as the purchase of the remaining \$36 million is assets. However, this part of the transaction would be closed several weeks before the remaining assets are purchased by the new corporation. Since the size of this part of the transaction will not exceed \$15 million and the purchase of the assets is not otherwise reportable, we do not believe that it must be reported. In addition, we do not believe that the purchase of the remaining \$36 million in assets by the new corporation must be reported if the new corporation does not satisfy the \$10 million "size of person" test.

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Please advise us if we are in error.

Thank you for your attention to this matter. We look forward to hearing from you.

